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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,) No. CV-09-8096-PCT-NVW
Plaintiff,) **ORDER**
vs.)
\$133,420.00 in U.S. Currency,)
Defendant.)
_____)

16 Before the Court are Claimant Damon Louis' Motion to Suppress (doc. # 22), the
17 Government's Motion to Strike Claim and Answer of Damon J. Louis (doc. # 27), the
18 Government's Motion to Stay Louis' Motion to Suppress (doc. # 29), Louis' Motion for
19 Summary Judgment (doc. # 42), Louis' Motion to Stay Discovery (doc. # 45), and Louis'
20 Motion to File Supplemental Memorandum (doc. # 53).

I. Facts

22 The following facts are either undisputed or are framed in the light most favorable
23 to Claimant Louis. On January 6, 2009, Officer Mace Craft of the Arizona Department of
24 Public Safety stopped a white 2009 Buick driven by Claimant Damon Louis on the
25 westbound Interstate 40 in Arizona. When prompted, Louis produced a California
26 driver's license and a rental agreement indicating he had rented the vehicle from Avis Car
27 Rental in San Francisco, California, on January 2, 2009. The vehicle was due to be
28 returned on January 9, 2009.

1 Officer Craft asked Louis where he was traveling from and why he didn't fly, to
2 which Louis responded that he had visited Albuquerque for a friend's wedding and had
3 driven with a friend who stayed there. When Officer Craft inquired about the wedding,
4 Louis explained that the wedding was in fact a month ago and that he had returned to
5 Albuquerque for the ceremony. Officer Craft eventually completed a traffic warning and
6 provided Louis with a copy. He then asked whether there was anything illegal in the
7 vehicle, to which Louis responded no. When asked, Louis also twice denied having any
8 large amounts of U.S. currency in the vehicle.

9 Another officer who had arrived on the scene subsequently conducted a pat-down
10 of Louis' person, which revealed two cell phones. Although the parties dispute whether
11 Louis consented to a search of his vehicle or to a canine drug detection sniff, Officer
12 Craft at some point directed his canine to sniff the exterior of the vehicle. After
13 observing the canine's reactions, Officer Craft informed Louis that he had probable cause
14 to search the vehicle and again asked if there was anything illegal inside. Louis said no.
15 A search of the trunk revealed three cardboard boxes, one of which contained a grocery
16 bag with three zip-lock bags of U.S. currency inside. Officer Craft placed Louis in
17 handcuffs and escorted him to the Arizona Department of Public Safety.

18 Upon arrival, two detectives advised Louis of his Miranda rights and conducted an
19 interview. Louis explained that after he rented the 2009 Buick, he drove from San
20 Francisco, California, to Denver, Colorado, and was on his way back to San Francisco
21 when Officer Craft stopped him. He also admitted that he was in fact aware of the
22 currency in the trunk of the vehicle because he had put it there. However, he refused to
23 answer any questions about how he acquired the currency, where it was going, or who it
24 belonged to. At the conclusion of the interview, Louis was invited to sign a DPS
25 "Disclaimer of Ownership of Currency or Property" form, but declined to do so without
26 the presence of an attorney. He was subsequently released and advised that he was free to
27 leave. His vehicle was returned, but law enforcement retained the two cell phones and
28 the currency.

1 On March 9, 2009, Louis filed a claim for the defendant currency with the Drug
2 Enforcement Administration. The Government initiated this *in rem* civil forfeiture
3 proceeding on June 5, 2009, alleging that the currency is subject to forfeiture pursuant to
4 both 18 U.S.C. § 981(a)(1)(C) and 21 U.S.C. § 881(a)(6) as proceeds traceable to
5 controlled substance offenses. In August 2009, Louis filed a claim and answer contesting
6 the forfeiture after the Court granted a stipulated extension of time in which to do so. The
7 claim alleges that Louis has “an ownership and/or a possessory interest in, and the right to
8 exercise dominion and control over, all or part of the defendant property.” (Doc. # 14.)

9 On October 5, 2009, the Government propounded special interrogatories pursuant
10 to Rule G(6) of the Supplemental Rules for Certain Admiralty or Maritime Claims and
11 Asset Forfeiture Actions, which allows the Government to serve interrogatories limited to
12 “the claimant’s identity and relationship to the defendant property without the court’s
13 leave at any time after the claim is filed and before discovery is closed.” Interrogatory 2
14 requested the following information:

15 State the extent and describe with particularity the nature of your interest in the
16 defendant currency, and identify how you acquired that interest. Your answer
should include, but not be limited to, the following:

17 (a) The date(s), time, place and manner in which the defendant currency
18 was obtained, including the names, address and telephone numbers of the
person(s) from whom the currency was obtained.

19 (b) The circumstances of each transaction by which you acquired or
20 obtained any interest in the defendant currency.

21 (c) The reason(s) the defendant currency was obtained, and witnesses,
22 including the names, addresses, and telephone numbers of such witnesses, to
any of the transactions by which the defendant currency was obtained.
23 ...

24 Louis objected to the request on various grounds, including his Fifth Amendment right
25 against self-incrimination and his Fourth Amendment rights against unreasonable
26 searches and seizures, but ultimately provided the following limited response: “Without
27 waiving said objections, my interest in the defendant property is as the owner and
28 possessor of said property, with a right to exercise dominion and control over said
property.” His responses to other similar interrogatories provided sometimes less, but

1 certainly no more, explanation of the nature of his property interest in the defendant
2 currency.

3 On January 14, 2010, Louis filed a motion to suppress evidence (doc. # 22), to
4 which the Government responded with its motion to strike Louis' claim and answer for
5 lack of standing (doc. # 27) and its motion to stay consideration of the motion to suppress
6 pending resolution of the motion to strike (doc. # 29). Louis followed his motion to
7 suppress with a February 24, 2010 motion for summary judgment (doc. # 42) arguing that
8 the Government lacked probable cause to initiate this forfeiture proceeding. All of the
9 aforementioned motions are currently pending.

10 **II. Analysis**

11 **A. Motion to Stay**

12 In its motion to stay, the Government contends that the issue of standing must be
13 resolved before Louis' motion to suppress is considered. Louis, on the other hand, argues
14 that because the motion to suppress seeks, in part, suppression of statements he made to
15 law enforcement officers regarding his relationship to the defendant currency, and
16 because those statements inform the standing inquiry, the Court should resolve the motion
17 to suppress before addressing standing. The motion to stay therefore boils down to a
18 threshold dispute over the order in which the Court may address the issues presented by
19 the various motions.

20 Civil *in rem* forfeiture proceedings are governed by the Supplemental Rules for
21 Certain Admiralty or Maritime Claims and Asset Forfeiture Actions. *United States v. \$*
22 *100,348.00 in U.S. Currency*, 354 F.3d 1110, 1117 (9th Cir. 2004). Rule G of the
23 Supplemental Rules, effective in 2006, permits any person claiming an interest in the
24 property at issue to contest the forfeiture by filing a claim in the court where the action is
25 pending. Supp. R. Certain Adm. & Mar. Cl. G(5)(a)(i). The government, in turn, may
26 move to strike the claim on various grounds, including the claimant's lack of standing.
27 *Id.* at G(8)(c)(i)(B). The motion to strike "must be decided before any motion by the
28 claimant to dismiss the action." *Id.* at G(8)(c)(ii)(A). The Advisory Committee Note to

1 Rule G(8)(c)(ii) further indicates that a claimant who lacks standing “is not entitled to
2 challenge the forfeiture on the merits.”

3 The parties spend an inordinate amount of time addressing whether the motion to
4 suppress is “dispositive” of the action, but that inquiry finds no basis in the language of
5 Rule G or its Advisory Committee Notes. Because the motion is not one seeking
6 dismissal of the action, the relevant inquiry is whether Louis’ motion to suppress is a
7 challenge to the forfeiture on the merits, and the answer is yes. The likelihood of the
8 Government’s success in this forfeiture action turns substantially on the admissibility of
9 its evidence, and particularly the \$133,420.00 in U.S. currency seized from Louis’ rental
10 vehicle. Louis’ motion to suppress challenges the admissibility of his statements to law
11 enforcement officials as the final fruits of the various allegedly unconstitutional searches
12 and seizures that occurred during his January 6, 2009 encounter. Those same searches
13 and seizures form the basis of Louis’ argument that other evidence, including the
14 currency itself, should be suppressed. Therefore, even if his statements are relevant to the
15 standing inquiry, a determination of their admissibility necessarily requires the Court to
16 evaluate the admissibility of most if not all of the Government’s evidence. It cannot
17 reasonably be argued that such a determination does not go to the merits of the action.

18 To be sure, other courts have required claimants to establish Article III standing as
19 a prerequisite to bringing a motion to suppress in a forfeiture proceeding. *See United*
20 *States v. \$ 1,185,135.00 in U.S. Currency*, 320 Fed. Appx. 893, 894 (11th Cir. 2008)
21 (noting that a claimant must establish standing to challenge the forfeiture proceeding in
22 order to raise a suppression claim); *United States v. \$ 321,470.00, U.S. Currency*, 874
23 F.2d 298, 300 (5th Cir. 1989) (affirming the district court’s finding that the claimant’s
24 lack of Article III standing mooted his motion to suppress); *United States v. \$ 543,190.00*
25 *in U.S. Currency*, 535 F. Supp. 2d 1238, 1248 (M.D. Ala. 2008) (addressing standing to
26 contest the forfeiture before addressing the lawfulness of the seizure). Therefore, the
27 admissibility of Louis’ statements cannot be evaluated until standing has been resolved.

28

B. Standing

As mentioned, Rule G of the Supplemental Rules permits any person claiming an interest in property at issue in a forfeiture proceeding to contest the forfeiture by filing a claim in the court where the action is pending. Supp. R. Certain Adm. & Mar. Cl. G(5)(a)(i). However, the claimant bears the burden of establishing standing, the threshold function of which is “to ensure that the government is put to its proof only where someone with a legitimate interest contests the forfeiture.” *United States v. \$ 557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 79 (2d Cir. 2002). Standing is a question of law. *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1047 (9th Cir. 2009).

10 The Government argues that Louis lacks both Article III and statutory standing.¹
11 The argument as to statutory standing is without merit because it incorrectly assumes that
12 Louis must be “an innocent owner” for purposes of 18 U.S.C. § 983(d)(1) in order to have
13 statutory standing. Whether a claimant can prove that he or she is an “innocent owner” is
14 irrelevant to the threshold standing inquiry; rather, it is a defense that can be raised to
15 defeat forfeiture. *See id.* (entitled “innocent owner defense”). A determination of
16 statutory standing ensures the claimant has complied with the procedural requirements of
17 18 U.S.C. § 983(a)(4)(a) and the Supplemental Rules for Certain Admiralty and Maritime
18 Claims. *See id.* § 983(a)(4)(A); *United States v. \$ 114,031.00 in U.S. Currency*, 284 Fed.
19 Appx. 754, 756 (11th Cir. 2008); *United States v. \$ 487,825.00 in United States*
20 *Currency*, 484 F.3d 662, 664 (3d Cir. 2007). Louis’ procedural compliance has not been
21 challenged. Therefore, only Article III standing need be addressed.

22 To have Article III standing, a claimant must demonstrate that he or she has “a
23 sufficient interest in the property to create a case or controversy.” *United States v. Real*
24 *Property Located at 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008). Although the

26 ¹In its Reply, the Government argues for the first time that Louis also lacks prudential
27 standing. The Court finds it unnecessary to address that issue. Therefore, Louis' recent
28 motion to file a supplemental memorandum addressing prudential standing will be denied
as moot.

1 Ninth Circuit has not expressly addressed the applicable standard of proof, a review of
2 existing law suggests the standard varies with the stage of the proceeding. *See United*
3 *States v. \$ 57,790.00 in U.S. Currency*, 263 F. Supp. 2d 1239, 1241-42 (S.D. Cal. 2003)
4 (harmonizing seemingly conflicting Ninth Circuit authority governing the applicable
5 standard of proof by distinguishing between stages of the proceeding).

6 At the motion to dismiss stage, a mere allegation of ownership or some
7 explanation of a lawful possessory interest is sufficient. *United States v. Real Property*
8 *Located at 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008); *see also United States v.*
9 *\$ 191,910.00 in U.S. Currency*, 16 F.3d 1051, 1058 (9th Cir. 1994) (reviewing a district
10 court’s denial of a motion to dismiss for lack of standing). However, mere unexplained
11 possession is insufficient, even at this early stage. *Id.*; *see also \$ 543,190.00 in U.S.*
12 *Currency*, 535 F. Supp. 2d at 1249.

13 At the summary judgment and trial stages, however, more is required. Rule
14 G(8)(c)(ii)(B), effective in 2006, states that a motion to strike for lack of standing “may
15 be presented as a motion for judgment on the pleadings or as a motion to determine after a
16 hearing or by summary judgment whether the claimant can carry the burden of
17 establishing standing *by a preponderance of the evidence.*” (emphasis added). The 2006
18 Advisory Committee Note for Rule G(8)(c)(ii) explains:

19 Paragraph (c)(ii) further identifies three procedures for addressing claim
20 standing. If a claim fails on its face to show facts that support claim standing,
21 the claim can be dismissed by judgment on the pleadings. If the claim shows
22 facts that would support claim standing, those facts can be tested by a motion
23 for summary judgment. If material facts are disputed, precluding a grant of
24 summary judgment, the court may hold an evidentiary hearing. The
25 evidentiary hearing is held by the court without a jury. The claimant has the
26 burden to establish claim standing at a hearing; procedure on a government
27 summary judgment motion reflects this allocation of the burden.

28 Supreme Court and Ninth Circuit case law also supports a heightened standard of
29 proof of standing at the summary judgment and trial stages. *See Lujan v. Defenders of*
30 *Wildlife*, 504 U.S. 555, 561 (1992) (because standing must be supported “with the manner
31 and degree of evidence required at the successive stages of the litigation,” a plaintiff

1 cannot rest on mere allegations at the summary judgment stage); *United States v. Real*
2 *Property Located at Section 18*, 976 F.2d 515, 520 (9th Cir. 1991) (requiring claimant to
3 establish standing by a preponderance of the evidence at trial).

4 Therefore, to defeat summary judgment, the claimant must come forward with
5 some evidence demonstrating a genuine issue of material fact as to standing, and at trial
6 or an evidentiary hearing, standing must be proved by a preponderance of the evidence.
7 See \$ 57,790.00 in U.S. Currency, 263 F. Supp. 2d at 1242. While a claimant is always
8 free to invoke the Fifth Amendment privilege against self-incrimination, the privilege is
9 not “a substitute for evidence that would assist in meeting a burden of production.”
10 *United States v. Rylander*, 460 U.S. 752, 758 (1983). “In other words, ‘[a] party who
11 asserts the privilege against self-incrimination must bear the consequence of lack of
12 evidence.’” *United States v. \$ 148,840 in U.S. Currency*, 521 F.3d 1268, 1274-75 (10th Cir.
13 2008) (citing *United States v. Taylor*, 975 F.2d 412, 404 (7th Cir. 1992)).

14 Here the Government has presented its motion to strike as a motion for summary
15 judgment accompanied by a separate statement of facts (doc. # 28) and several exhibits,
16 including Louis’ responses to the Government’s Rule G(6) special interrogatories. To
17 defeat the motion, Louis must produce some evidence demonstrating a genuine issue of
18 material fact as to whether he owns or otherwise has a lawful possessory interest in the
19 defendant currency. This he has failed to do because his response, which is premised
20 entirely on the mistaken assumption that the action is in its initial stages, merely asserts
21 that he is required to do no more than allege an ownership or lawful possessory interest in
22 the currency. The only proffered “evidence” of his ownership or other property interest
23 are his conclusory responses to the Government’s special interrogatories and the fact that
24 the currency was in his possession at the time it was seized. Neither is sufficient.

25 Louis’ responses to the interrogatories merely assert bald, unexplained ownership
26 and possessory interests in the currency. There is no explanation of how or why he
27 acquired the funds. While he is entitled to invoke Fifth Amendment protection against
28 self-incrimination, he does so at the peril of failing to produce sufficient evidence of

1 standing to contest this civil proceeding. Louis has produced no evidence corroborating
2 his claims other than the fact that the currency was in his possession at the time it was
3 seized. Mere unexplained possession does not establish a possessory interest even at the
4 pleading stage, and it is insufficient to create a *genuine* issue of material fact as to
5 ownership.

6 Though summary judgment is warranted in light of Louis' inadequate response,
7 the Court is mindful of the somewhat confusing state of Ninth Circuit authority on the
8 standard of proof applicable to standing in forfeiture proceedings. Therefore, the Court
9 will deny the motion to strike and instead conduct a Rule G(8)(c)(ii)(B) evidentiary
10 hearing on Friday, April 30, 2010, at 10am to determine whether Louis can establish
11 standing by a preponderance of the evidence. By Friday, April 23, 2010, the parties are
12 requested to submit a brief no longer than 12 pages addressing the following:

- 13 (1) Which statements made by Louis during the January 6, 2009 encounter does
14 each party intend to introduce at the hearing, if any?
- 15 (2) Of those statements, which are incriminating, if any?
- 16 (3) Assuming *arguendo* that the statements are the fruits of unlawful searches
17 and seizures and therefore subject to suppression, may they nevertheless be
18 introduced for purposes of determining standing?
- 19 (4) Assuming *arguendo* that the statements are the fruits of unlawful searches
20 and seizures and therefore subject to suppression, may they nevertheless be
21 used for substantive impeachment purposes?

22 **IT IS THEREFORE ORDERED** that the Government's Motion to Stay Louis'
23 Motion to Suppress (doc. # 29) is granted.

24 **IT IS FURTHER ORDERED** that the Government's Motion to Strike Louis'
25 Claim and Answer (doc. # 27) is denied as to summary judgment, without prejudice to the
26 April 30, 2010 evidentiary hearing on Claimant's standing..

27 **IT IS FURTHER ORDERED** that Louis' Motion to File Supplemental
28 Memorandum (doc. # 53) is denied as moot.

1 IT IS FURTHER ORDERED setting an evidentiary hearing on the issue of
2 standing for Friday, April 30, 2010, at 10am. The parties shall submit the additional
3 briefing requested in the order by Friday, April 23, 2010.

4 IT IS FURTHER ORDERED that Claimant Damon Louis submit to the Court a
5 new uncorrupted copy of the non-electronically filed Exhibit B, submitted in support of
6 his Response to the Government's Motion to Stay and his Response to the Government's
7 Motion to Strike. (Doc. # 47.)

8 DATED this 9th day of April, 2010.

Neisser

Neil V. Wake
United States District Judge